

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

FREDRICK ANTHONY KISER,

Plaintiff

V.

KEVIN SYMONS LAINE,

Defendant.

CIVIL ACTION NO. 5:20-cv-000197

ORDER

Plaintiff Fredrick Kiser, proceeding *pro se*, filed the above-captioned civil action complaining of alleged violations of his constitutional rights. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636.

Plaintiff complains that his defense counsel, Kevin Laine, provided ineffective assistance and violated attorney-client privilege by discussing his case outside of their legal team. Docket No. 1 at 3–4. After review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed as frivolous and for failure to state a claim upon which relief may be granted because defense attorneys do not act under color of state law and therefore are not amenable to suit under the Civil Rights Act, 42 U.S.C. § 1983. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981); *Mundine v. Johnson*, 244 F.3d 134 (5th Cir. 2000).

Plaintiff received a copy of this Report on January 4, 2023, but has filed no objections. Accordingly, Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017); *Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203- RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the Report of the Magistrate Judge (Docket No. 9) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-captioned civil action is **DISMISSED WITHOUT PREJUDICE** as frivolous and for failure to state a claim upon which relief may be granted. The dismissal of this lawsuit shall have no effect upon any remedies which may be available to Plaintiff in habeas corpus or in the courts of the State of Texas. A final judgment will be entered in this case in accordance with this Order.

So ORDERED and SIGNED this 13th day of April, 2023.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE